

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

**L.H, et al.,**

**Plaintiffs,**

**vs.**

**NO.CIV.S-06-2042 LKK/GGH**

**ARNOLD SCHWARZENEGGER, et al.,**

**Defendants.**

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**FIRST REPORT OF THE SPECIAL MASTER  
ON THE STATUS OF  
CONDITIONS OF THE STIPULATED ORDER**

**Background**

The Plaintiffs in this case filed their Complaint with the Court on September 13, 2006. The Court certified this case as a class action by Order dated February 28, 2007. The Defendants are state agencies and state officials responsible for the policies, procedures, and practices by which California conducts juvenile parole revocation proceedings, to include: the Board of Parole Hearings, the Division of Juvenile Justice, the Juvenile Parole Board, and the California Department of Corrections and Rehabilitation.

On September 19, 2007, the Court granted partial summary judgment in favor of Plaintiffs, holding that California's juvenile parole revocation system, by failing to provide a timely probable cause hearing, violated the due process rights of the Plaintiff

class as they were described in *Morrissey v. Brewer*. On January 29, 2008, the Court held that Defendants' failure to appoint counsel for all juvenile parolees is violative of the due process rights of the Plaintiff class, according to precedent set in *Gagnon v. Scarpelli*. In the same order, the Court also found that Defendants' policies and practices violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The Court ordered the Defendants to

- (1) begin appointing counsel to represent juvenile parolees at parole revocation hearings no later than February 15, 2008, and to provide that counsel with access to confidential contact space and the necessary files sufficiently in advance of the hearing to allow adequate preparation,
- (2) allow parolees to obtain counsel of their own choosing, who shall be able to represent clients under the same terms as appointed counsel and shall be notified when a hold is placed on their clients
- (3) ensure effective communication and provide necessary accommodations, and
- (4) develop sufficiently specific policies and procedures to ensure continuous compliance with all of the requirements of the American with Disabilities Act during revocation proceedings.

Chase Riveland and Virginia Morrison were appointed as Special Master and Deputy Special Master, respectively, on May 22, 2008. The parties, on June 13, 2008, submitted a Stipulated Motion for Preliminary Approval of Class Settlement. The Court granted the motion on June 17, 2008 and approved a Stipulation and Order for Permanent Injunctive Relief on October 7, 2008 (hereafter "Stipulated Injunction").

### **Special Master Activities**

The Special Master's team spent the early months of this term becoming acquainted with the nuances and differences of the juvenile parole system from the adult parole system. Although the Special Master and Deputy Special Master are intimately acquainted with the adult parole system due to their concurrent service as Special Master and Deputy Special Master in *Valdivia v. Schwarzenegger*, there are differences between the adult and juvenile parole systems, not the least of which is the much lower number of revocations in the juvenile system.

The team observed hearings in two locations, the Special Master listened to tapes of earlier hearings, he visited a juvenile parole office, and the team was briefed on the information systems and policies and procedures. The team conducted meet and confer sessions on policy issues, attended task force meetings, and participated in field file review sessions.

Defendants initiated a monthly information-sharing meeting with Plaintiffs and the Special Master. This is an excellent mechanism for sharing appropriate information and working collaboratively toward implementing the remedy.

### **Parties' Activities to Date**

In this period – where some court-ordered requirements are in effect, while full implementation is not yet due – the parties have concentrated on negotiating policies, rolling out certain components, designing the full system, and preparing staff to undertake the anticipated changes.

Most assessments of compliance would be premature. Defendants have met timelines specified in the orders preceding the Stipulated Injunction, though Plaintiffs advocate that qualitative improvements are needed. The parties disagree concerning the timing of obligations arising from the Stipulated Injunction. Plaintiffs argue that systems should be in place and work toward improving timeliness should be underway in order to meet the full implementation requirement that is effective in December; Defendants assert that no injunction timeframes are binding until that full implementation date.<sup>1</sup>

In this report, the Mastership takes the approach of measuring current practice in relation to the timeframes and other requirements that will be fully in place in December. This serves as a baseline for the Court and the parties to observe progress. Assessments of compliance generally are not advanced.

Plaintiffs' counsel and Defendants have, since the filing of the Stipulated Injunction, aggressively "met and conferred" regarding policies, procedures, and forms. Numerous drafts have been developed by interdivisional workgroups with reviews and detailed commentary by Plaintiffs' counsel. All agree that it has been a collaborative, productive effort.

The Defendants appointed a knowledgeable project manager to direct all facets of meeting the requirements of the various court orders. The project manager organized a task force composed of representatives of all affected parties in the California Department of Corrections and Rehabilitation and external entities; it has met regularly since February 2008. The project manager also convened several groups to develop the various required policies and procedures. These groups were formed prior to the parties agreeing on the Stipulated Injunction and they continue on to date. This interdivisional

work serves very well to generate effective practices and avoid many of the pitfalls seen in the implementation of other lawsuits' remedies.

Effective oversight is demonstrated in other practices, as well. Defendants hold a monthly telephone conference with supervising parole agents and hearing officers to troubleshoot processes, help interpret the mandates, and answer implementation questions.<sup>2</sup> Defendants and representatives of the administrator of the attorney panel, California Parole Advocacy Project ("CalPAP"), meet weekly to discuss open cases and address system or case-specific problems. Staff review reports of all cases, which CalPAP has provided monthly since May. The project manager provides guidance and supervision to field staff in addition to that of their supervisors.

Defendants have initiated staffing for implementing the Stipulated Injunction, hiring an office manager; seven of nine Board Coordinating Parole Agents, who are responsible for serving notice and coordinating hearings; and three of four hearing officers. The five commissioners also hold hearings. Hiring has included a small number of analysts and clerical staff, with plans for a few more. During the state budget impasse, Defendants say they obtained some exemptions to the prohibition on employing retired annuitants, assisting their forward progress on implementation.

Defendants reportedly have submitted a budget change proposal for staffing for information systems, transportation, and other staff to carry out revocation proceedings. Hiring for all categories – established and proposed – is affected by the state budget and related hiring freeze. At best, the divisions must seek exemptions to the freeze. This process, in addition to the lengthy routine procedures, encumbers the possibility of hiring and training staff in time to initiate *LH* processes by the Court-ordered December 2008

deadline. At worst, of course, those exemptions could be denied, rendering December compliance impossible.

Until new procedures are implemented, it is difficult to determine the appropriate level of staffing. While the volume of proceedings is fairly low, there is a critical mass of staff necessary for administering a system, and proceedings are spread across more than 100 institutions statewide. The sufficiency of allocated positions also merits close attention as this new system rolls out.

Prior to the issuance of the Stipulated Injunction, the Defendants complied with several activities previously directed by the Court and agreed upon between the parties. Each of the following requirements have been accomplished:

- Appointment of attorneys in all revocation cases
- Submission, timely, of ADA policies and procedures to the Court; however, the Plaintiffs strongly dispute that the submission complied with the provision to be “sufficiently specific,” including noting that some steps in the revocation process were not included
- Implementation of probable cause hearings
- Ceased the use of temporary detentions and requested the rescission of the regulation regarding temporary detentions
- Halted the practice of waivers and admissions without counsel
- Facilitated provision of accommodations at Division of Juvenile Justice and county jail facilities
- Posted and distributed notice of the material terms of the settlement<sup>3</sup>

Preparations for full implementation include:

- Negotiating and instituting interim procedures to identify and provide reasonable accommodations for those with disabilities or effective communication needs

- Providing revocation hearings, albeit not timely
- Hiring additional staff at the Juvenile Parole Board
- Extensive training in due process, ADA requirements, and effective communication for Division of Juvenile Parole Operations and Juvenile Parole Board staff
- Continuing to modify or develop various information systems that will assist in the tracking of revocation process activities; they will also provide information for the various decision-makers. This includes contracting for the information system design specified in the Stipulated Injunction, and initial steps in software design and hardware acquisition.

Plaintiffs' counsel object to the amount of information they have received as to the success, or lack thereof, of the actions taken by the Defendants to date. As the issue of monitoring remains in dispute and document production has not begun, they have limited access to determine what is actually occurring. On the other hand, there have been monthly all-parties meetings designed to share information, and Plaintiffs have sometimes observed Defendants' task force meetings. Plaintiffs are troubled by the delays in appointment of attorneys and the holding of hearings; missing policies, procedures, and forms; and the fact that modification or rescission of some regulations has not yet been initiated. With one substantial timeline already missed, the absence of desired information and first-hand observation fuels Plaintiffs' apprehension that the remedy will not be implemented in December and may become further and further extended.

### **Stipulated Injunction Expectations**

Parties agreed that within 90 days of the parties signing the Stipulated Injunction, and no later than September 15, 2008, the Defendants were to develop sufficiently

specific draft policies, procedures, and plans to:

- ensure that revocation proceedings are in continuous compliance with all of the requirements of the Constitution and applicable statutes,
- address a method for accurately tracking the timeliness of hearings and other steps in the parole revocation process,
- include the timely provision of accommodations for juvenile parolees' disabilities and effective communication needs,
- cover not in custody hearings, dual commitments, and parole exit meetings; and
- address such disputed issues as telephonic probable cause hearings, circumstances constituting good cause for delayed hearings, and remedies for untimely hearings.

The parties agreed that the Defendants are to submit drafts of the policies and procedures to the Plaintiffs and to the Special Master prior to implementation, no later than September 4, 2008, and to meet and confer at least one time within the subsequent 14 business days.

Defendants must submit all policies and procedures to the Court by November 4, 2008, and implement them within 180 days after the signing of the Stipulated Injunction, and no later than December 15, 2008.

Additionally, Defendants are to incorporate the Juvenile Parole Board revocation proceedings business process requirements into the existing Revocation Scheduling and Tracking System within six months of the signing of the Stipulated Injunction.

Defendants were required to post notice of the material terms of the settlement on their website and in various places in facilities, and to provide that notice to parolees.

Defendants must also undertake a review of existing regulations, rules, and procedures to ensure that they are consistent with the Stipulated Injunction.



There has been good progress on the above-described requirements.

Policies: Defendants drafted a plethora of policies and procedures and submitted them to Plaintiffs beginning in early August; since mid-August, the parties have frequently met and conferred to negotiate and refine those policies.<sup>4</sup> Defendants' inter-division workgroups also met often, responsive to the concerns raised in negotiations. In some weeks, there were policy meetings daily. Much of the effort has been directed to generating greater detail and specificity, as well as negotiating substantive issues. While most policies are under negotiation, Plaintiffs also note that there are some provisions of the Stipulated Injunction not yet captured in policies, and which must be initiated.<sup>5</sup> They also describe several policies not yet describing how they will be applied in county jails and CDCR adult institutions; these additions will be important.

While it appears that the policies and procedures will not be completed according to all indicated timelines, the parties are taking the time necessary to generate documents to meaningfully guide practice, and they continue to make good progress. The parties are negotiating extending the time to policy completion and implementation -- conditioned on timely implementation of 19 key features of the injunction -- and the Special Master concurs.<sup>6</sup>

The particular policies specified in the Stipulated Injunction -- definitions of good cause for delayed hearings, remedies for untimely hearings, dual commitments, parole exit meetings, and not in custody hearings -- are being negotiated and remain to be resolved. The possibility of telephonic probable cause hearings has not yet been taken up.

The parties report their greatest policy disagreements center on the definition of good cause, the degree and scope of ADA review, the timing of applying determinate

sentencing, provisions concerning severely mentally ill parolees, and mechanical restraints.

Tracking and accommodations:<sup>7</sup> At the current time, CalPAP maintains data concerning the timeliness of some components of the revocation process. CalPAP has previously demonstrated its dedication to, and facility in, data management, and this method should serve well. Defendants have also taken initial steps for the longer-term strategy for the tracking specified in the Stipulated Injunction.<sup>8</sup> The systems will need to track cases handled by public defenders and private attorneys, as well. Work is also underway to begin to identify and provide accommodations for juvenile parolees' disabilities and effective communication needs during the revocation process.<sup>9</sup>

Notices:<sup>10</sup> The parties collaborated on producing class notices. In compliance with this Court's Order, Defendants posted notice of the settlement terms on their website, and reportedly in the specified locations in facilities. They mailed audio, large print, and standard print versions to parole offices, Juvenile Justice facilities, CDCR adult facilities and reception centers, county jails, group homes, and juvenile halls with instructions to post them and distribute them to parolees; copies were also mailed to parolees. Plaintiffs object that there was no posting in Defendants' Ombudsman's office, as required in the Stipulated Injunction; Defendants indicate that that office was provided a copy of the injunction but is not open to the public and would not be visited by parolees. Although it was not comprehensive, Defendants report that they verified the postings by calling all Juvenile Justice facilities and asking staff to check when onsite at other facilities. A number of adult and juvenile facilities called for more materials, also suggesting that these were being distributed.

Regulations: Defendants indicate they have undertaken the mandated review of regulations and have identified nearly 100 requiring change.<sup>11</sup> They say they will undertake the revision process once policies and procedures are finalized.<sup>12</sup>

### **Stipulated Order Requirements**

The specific aspects of the remedy are outlined below. As is appropriate at this stage, definitions, logistics, and other aspects remain in development for some requirements. Others have been put in place on an interim basis; still others are partially implemented with the intention of strengthening them through experience and guidance by the expected implementation date.

At this point, the Special Master would expect to see emphasis on sound design and initiating some of the revocation steps. Defendants have met these expectations well. As with all new processes, in time, staff will gain facility with all the complexities of hearing process, meeting timeframes, and handling special circumstances. To the extent that some requirements can be measured at this time, this will serve as a baseline from which the Court and the parties can later determine progress toward compliance.

**Parole Agent and Supervising Parole Agent conference within two business days** (¶ 27): Information on this requirement has not come to the Special Master's attention.

**Notice of charges and rights within three business days** (¶ 28): Information on this requirement has not come to the Special Master's attention.

**Non-acceptance of written admissions to a violation of parole, or waivers of hearing rights or the right to counsel, made prior to the juvenile parolee meeting with counsel** (§ 17, 31): Defendants report that they issued instruction on this point to field staff effective before the Stipulated Injunction was signed, in April 2008. They say that service forms were modified to eliminate admissions solicitations and waivers, and coordinating parole agents were instructed to keep confidential the contents of contacts when serving notice and rights.<sup>13</sup> The parties have not yet undertaken a review of whether the practice has completely ceased. No reports of problematic waivers have been presented to the Special Master.

**Requirements concerning attorney representation**

**Provision of counsel during revocation proceedings** (§ 15): Defendants report that attorneys have consistently been appointed for all parolees taken into custody on a new parole hold since February 15, 2008.<sup>14</sup> There is no system to detect whether any appointments are overlooked.<sup>15</sup> Youth reportedly are allowed to waive counsel, but advisory counsel remains in the room.<sup>16</sup>

CalPAP was retained to provide representation as part of a pre-existing contract in the last fiscal year. Defendants accomplished in an extraordinarily short time an independent contract to continue services through February 2009.<sup>17</sup>

**Timely appointment of counsel** (§ 16): All acknowledge that practice does not yet approach timeliness standards. Significant change in timeliness will require a structural change in practices, as parole agents currently are permitted 15 days to write a violation report – a critical component for preparing a defense. This timing, of course, exceeds the

Stipulated Injunction's timeframes for attorney appointment. New requirements for producing violation reports presumably will be included in the in-progress policies and procedures and taken through necessary processes with the parole agents' bargaining unit.

Analysis of recent CalPAP data yields the following information:<sup>18</sup>

- The range of time to appointment has been 7 days to 4½ months
- The most typical times to appointment were 2 to 4 weeks.<sup>19</sup> This is unsurprising, in that the violation report is commonly produced in 2 weeks.
- The number of cases with counsel appointed in less than two weeks improved during the Round.<sup>20</sup>
- Among the cases with longest times to appointment, the numbers held steady during the period.<sup>21</sup>
- There was a significant increase in attorney appointments in August and September.<sup>22</sup>

CalPAP notes that its attorneys are appointed with sufficient time to prepare for probable cause hearings, and a review of the data suggests the same.<sup>23</sup>

At the time of attorney appointment, provision of date, time, and location of the hearing (¶ 16): Defendants provide this information to CalPAP, though this is not synchronous with the attorney appointment. CalPAP reports that the average time difference between these two acts decreased in the most recent month.<sup>24</sup>

At the time of attorney appointment, provision of a copy of all the evidence on which the State intends to rely or which may be exculpatory; evidence not provided with at least two days' notice shall be excluded unless the state shows good cause (¶ 16, 19): CalPAP interviewed some of its attorneys, whose experience was that all such evidence was being provided.<sup>25</sup> On the other hand, the Special Master's observations at one

hearing location provided a very small snapshot of different practice. In two of four probable cause hearings, the hearing officer found she had evidence that had not been provided to the attorney. She gave the attorney time to review and discuss it with her and with the parolee in privacy. She did not exclude the evidence; the parties disagree about whether evidence exclusion is required at probable cause hearings. A broader examination of the scope of this problem has not been conducted.<sup>26</sup>

At the time of attorney appointment, provision of relevant educational, mental health and disability identification and source documents (§ 16): The parties have concentrated heavily on this topic, attempting to define which documents and electronic files, and which information contained in them, are relevant and necessary for reasonable accommodations and attorney representation. Much of this information is maintained in documents and files in which there is a volume of unrelated material. Whether working with a large volume or synthesizing it, this creates questions of utility and burden for both the State and the attorneys. The parties, CalPAP, and the Special Master's team have closely reviewed an existing database and field files with these issues in mind, and negotiations are ongoing.

CalPAP indicates that the materials it receives commonly include some information on mental health, education, and/or disability, but there is significant variation in packet contents and utility of the information.<sup>27</sup>

Right to be represented by counsel of choice; process for timely notifying of the counsel of record of the imposition of a parole hold (§ 18): The parties convened representatives of public defenders' offices throughout the state to design procedures for notifying the latter counsel, and private attorneys, when a parole hold has been placed on

a client. That work group reportedly met several times and has agreed to procedures.<sup>28</sup> Defendants also reportedly revised the request for attorney form to reflect this option.

Attorney will be informed of Return to Custody Assessment by the 10<sup>th</sup> business day after the hold (¶ 30): This element reportedly has not been instituted yet.<sup>29</sup>

Counsel to meet with client at least 24 hours prior to the probable cause hearing (¶ 16): CalPAP administration believes that its attorneys receive information in sufficient time and that attorneys are consistently meeting with parolees at least a day in advance of these hearings.<sup>30</sup> Data support these assertions, as CalPAP had the revocation packet and notice documents three days or more ahead of the probable cause hearing with extremely rare exceptions.<sup>31</sup>

Adequate time for representation; reasonable access to clients and files; confidential phone calls and space in which to meet; observing staff cannot participate in proceedings (¶ 20, 23): Defendants indicate that routine attorney-client visiting spaces are used at county jails, as well as a room at each Division of Juvenile Justice facility without staff present during the visit.<sup>32</sup> CalPAP reports reasonable access to clients and files.<sup>33</sup> Plaintiffs are concerned that the policies under discussion for attorney access – based in those in use under the *Farrell* remedy<sup>34</sup> – may be insufficiently detailed and implemented to date.<sup>35</sup> Information on the other aspects of this set of requirements has not come to the Special Master's attention.

Standards, guidelines, and training for effective assistance of state-appointed counsel (¶ 21): The parties have been negotiating these standards and guidelines and report that they are making progress.

Compensation for preparation, hearings, and appeals (§ 24): It is the Special Master's understanding that compensation has been provided for as required.<sup>36</sup>

Return to custody assessment within nine business days (§ 29): It is the Special Master's understanding that this requirement is not yet in place.<sup>37</sup>

### **Probable cause hearing requirements**

Expedited probable cause hearings (§ 26): Information on this requirement has not come to the Special Master's attention.

Probable cause hearings within 13 business days after the hold is placed, including written bases for findings (§ 32, 40):<sup>38</sup>

There have been substantial gains in implementing this requirement. Defendants report initiating hearings on April 25, 2008 and holding hearings for all parolees with newly placed holds since that time. In addition, staff indicate they independently acted to review all cases in custody and provide attorneys and a probable cause hearing for all parolees in "pending revocation" status, regardless of the date they were taken into custody. Some of these youths had been in custody for lengthy periods. Defendants say that these hearings are nearly complete.

Hearing officer training reportedly included elements of violations, probable cause standards, and other aspects of due process. Defendants say hearing officers are asked to assess probable cause on each count and, separately, to determine whether retention in custody is warranted.<sup>39</sup> Unlike previous practice, all allegations of technical violations and new crimes are heard.

As to facilities, staff say they have surveyed all internal facilities and contract jails



concerning space, and negotiated a dedicated room in each Division of Juvenile Justice facility and access to the rooms at CDCR institutions and county jails where adult revocation hearings are held. Staff also report having purchased computers for use by coordinating parole agents and hearing officers; to the Special Master's knowledge, the equipment is not yet in use.

. Defendants indicate that parolees are receiving written findings when the hearings are conducted at Division of Juvenile Justice facilities, and staff are working on systems to provide those documents when hearings occur at other facilities.<sup>40</sup>

Timeliness will remain one of the biggest challenges. CalPAP keeps a variety of data, including the timeliness of hearings, which provides a baseline from which to measure. To date, only five hearings met the standard to be fully implemented in December and there were not many that came close.<sup>41</sup> Times to hearing were distributed broadly over the range of 11 business days to almost 6½ months.<sup>42</sup> No patterns of improvement were evident yet.<sup>43</sup>

As an interim procedure, all cases where probable cause is found must continue on to revocation hearing, unless the parole agent recommends that the parolee continue on parole and the hearing officer affirms that.<sup>44</sup> CalPAP data show that such releases are increasing; in the most recent three months, 28% of probable cause hearings have resulted in a continue on parole decision or dismissal.<sup>45</sup>

The Special Master's early observation of probable cause hearings revealed several things. At the first institution visited, in all instances, the parolees had been in custody for very long period of time—as long as seven months. All were represented by appointed CalPAP attorneys. Most had revocation initiated due to technical violations of

parole conditions. All were in their early twenties. The hearing examiners had experienced rudimentary training but indicated a desire for more. They did specifically find probable cause.

At the second institution visited, the Special Master's team observed one hearing officer conduct four probable cause hearings. Commonly, the parolees had been in custody one month before the hearing. The hearings were carried out with fairly consistent practices. The hearing officer confirmed that the parolee received and read his documents and she conducted an interactive ADA assessment, emphasizing education and cognitive function. She generally asked the parolees if they felt she was fair and impartial, and oriented them to the probable cause standard and what to expect in the hearing, taking care to use analogies from familiar contexts. She asked counsel if he had met with his client and whether he stipulated that ADA, effective communication, and due process rights had been met so far.

She read the allegations and their bases, and she took pleas. Admitting the charges was very common. The parolees were given time to read documents and to offer evidence, which the hearing officer considered. In two cases, the hearing officer noted there was evidence the attorney was unlikely to have received, and she called it to his attention and gave him time to review and discuss it with her and with the parolee in privacy. The hearing officer explicitly found probable cause on contested allegations but did not where there was an admission. She and the attorney sometimes discussed the merits of conducting a "not in custody" revocation hearing. She discussed the 50-mile limitation when scheduling hearings. A record was made on handwritten forms.

The Special Master also interviewed juvenile parole staff at one location. They generally were positive regarding the conditions of the Stipulated Injunction. They did express some concern about the required timeframes that affect them, particularly around their ability to receive arrest reports from various law enforcement agencies. They indicated that there are considerably more resources in the Division of Juvenile Justice and the community for juvenile parolees; therefore, they often continue a person on juvenile parole even when the youth has a concurrent adult conviction, resulting in dual supervision.

Definition of presumed prejudice (§ 32): Information as to this requirement did not come to the Special Master's attention.

**Mechanical restraints at hearings** (§ 46):

The Stipulated Injunction prohibits Defendants from using any policy requiring mechanical restraints for all parolees in revocation hearings. It requires Defendants to develop related policies, procedures, and training that are consistent with the ADA, the Rehabilitation Act, the due process clause, and Title 15 California Code of Regulations section 4034.4.

While present policy gives the hearing officer the authority to order restraints based on the parolee's "...history and propensity for violence," in practice, the Defendants have historically shackled juvenile parolees in mechanical restraints at hearings, this being done at the direction of Juvenile Parole Board policy. In negotiating the required policies, the parties disagree as to the criteria for use of restraints.

Defendants also assert that they must defer to the policies of local jurisdictions, even if this calls for uniform restraint application;<sup>46</sup> Plaintiffs' counsel reject this deference.<sup>47</sup>

Although the issue remains in dispute, the parties continue to work toward a compromise.

**Requirements related to revocation hearings:**

Final revocation hearing on or before 35 calendar days after the parole hold is placed (§ 33): Defendants are providing revocation hearings, but timeliness has not yet been addressed. CalPAP data shows that, of the 181 revocation hearings in a four-month period, only 11 met the standard to be fully implemented in December.<sup>48</sup> A similar number missed the standard by a week or less.<sup>49</sup> The range of times to hearing was 30 days to 6½ months.<sup>50</sup> Defendants and CalPAP also have been monitoring the times from probable cause hearing to revocation hearing; a review indicates that practice was quite variable and did not show a consistent trend over time.<sup>51</sup> Improvements were not yet evident.<sup>52</sup>

The number of attorney appointments grew during the Round, for a total of 259 hearings concluded in the most recent four-month period.<sup>53</sup> As to dispositions:

- By far, the most frequent disposition was to continue the youth on parole; this occurred in nearly half of the cases either at probable cause hearing or revocation hearing.<sup>54</sup> Plaintiffs are troubled by this, reading it as an indication that the detentions may not have been necessary.
- Another 11 cases were dismissed<sup>55</sup> and a handful received credit for time served.
- Two youths were sent to a treatment program.
- For those returned to custody, terms covered nearly the full range up to a year, but the most typical times were 6 and 9 months.<sup>56</sup>

- Where previous average terms, which included parolees committed on lower level crimes, were reportedly 5.5 months,<sup>57</sup> the average for this recent group was 7.7 months.

The parties continue to negotiate a number of aspects of the conduct of these hearings. Among them, Defendants propose to permit parolees to waive timing requirements subject to Defendants' option to deny the request for good cause; Plaintiffs object and negotiations are ongoing.

Parole revocation hearings to be held within a 50-mile radius of the alleged violation (¶ 36): CalPAP provided data indicating that, in 160 revocation hearings examined, 96% were compliant with the 50-mile requirement.<sup>58</sup> On learning this, shortly before the writing of this report, Defendants offered to investigate the reasons. Another eight cases were heard more than 50 miles from the alleged conduct after the parolee waived this right.

When working with juvenile parolees, there are complications in honoring this requirement. Where parolees must be transported to a county jail for a hearing within this limit, the majority of county jails will not permit those in juvenile custody to be housed onsite short-term.<sup>59</sup> A small number of jails currently will not allow juvenile proceedings to take place there. Defendants continue to negotiate these points, as well as negotiating with CDCR adult institutions for the transport of juvenile parolees housed in adult facilities under dual commitments.

Confrontation rights (¶ 37): In February 2008, the Division of Juvenile Justice trained its hearing officers and Board Coordinating Parole Agents concerning the conditional right to confront and cross-examine witnesses as articulated in *United States v. Comito* and related case law. Defendants represent that the training was consistent

with this Court's interpretation of those precedents later issued in *Valdivia v. Schwarzenegger* on March 25, 2008.<sup>60</sup>

Neither the Special Master nor the parties have been present for revocation hearings, subsequent to the training, to observe the application of these principles.

During negotiations, disagreements have arisen concerning whether these rights apply, or the extent of limitations, in the dispositional phase of a hearing and in revocation extension hearings.<sup>61</sup>

Tape recordings, including new hearing if inaudible (§ 41, 42): Defendants report that they have purchased digital audio recording equipment and are working through difficulties related to storage.<sup>62</sup> To the Special Master's knowledge, the equipment is not yet in use. Plaintiffs note that, if hearings are stored on compact discs, a means of playing them will need to be available.

The Special Master does not have information concerning the following four requirements related to revocation hearings:

Evidence on the same terms as the state (§ 33)

Supplemental charges (§ 34)

Definition of good cause for delay, remedy for timeframe violation (§ 33)

Not in custody hearings within 60 days after service and with all due process and ADA protections (§ 45)

### **Requirements related to disposition**

Limitation of return to custody time to one year except for willful program failure or serious in-custody misconduct (§ 35): The parties have reached agreement on the definitions of willful program failure and serious in-custody misconduct. Other aspects of

the policy are proceeding through negotiation.<sup>63</sup>

Development of a matrix of ranges of revocation terms for specific violations

(¶ 35): Defendants report developing a risk assessment instrument, as well as considering objective parole revocation disposition standards consistent with the system's treatment and training objectives.<sup>64</sup> Plaintiffs are concerned that the revocation matrix under discussion allows for a lengthier revocation term than is available in adult revocations, and does not appear to allow hearing officers to consider less restrictive alternatives to revocation.<sup>65</sup>

Release no later than three days if time has been already served (¶ 38): Information concerning this requirement did not come to the Special Master's attention.

**Requirements related to ADA and effective communication**

These requirements were reflected both in this Court's January 29, 2008 Order and in the Stipulated Injunction. Defendants were required to submit draft policies and procedures to the Court by March 15, 2008, and to fully implement the ADA and effective communication components of the Stipulated Injunction by September 2, 2008.

Although Defendants timely submitted draft policies and procedures, Plaintiffs considered them far from sufficiently specific and the parties have continued to negotiate them. The parties have exchanged multiple drafts and met and conferred on at least five occasions.<sup>66</sup> Both report continuing progress.

Defendants are not in compliance with the full implementation requirement. They have, however, promulgated and trained on interim procedures and continue to work in good faith toward full implementation.

ADA and effective communications accommodation (§ 23, 48, 50, 51, 53):

During September and October 2008, Defendants report, staff were trained on this topic.<sup>67</sup> Parole agents and their supervisors were given detailed training on the requirements of the ADA, cognitive disabilities, learning disabilities, physical disabilities, methods of effective communication, and documents in the field file containing pertinent information. Board Coordinating Parole Agents learned about the interim procedures and their responsibilities. Hearing officers learned about the ADA, including practicing interactive ADA reviews, in April 2008. Plaintiffs observed training and found it beneficial. They also have reservations about the use of an interim policy, in that expanding responsibilities and revising habits grounded in interim procedure training can be more difficult.<sup>68</sup>

Interim procedures require each of these staff to provide reasonable accommodations.<sup>69</sup> Defendants report that all coordinating parole agents carry magnifying sheets and assistive hearing devices, and this equipment is also available through parole agents.<sup>70</sup> These do not include all devices listed in the Stipulated Injunction; Defendants assert that Braille has largely been replaced by other technologies, suggesting that there is little value in this method, and the parties have discussed looking into alternatives. Defendants have not purchased Galileo readers.

For speakers of languages other than English, Defendants have contracted for sign language interpreters and telephone translation service.<sup>71</sup> They are encountering implementation barriers concerning the equipment and its functionality at many sites; they indicate they are working to address these. In the meantime, they say they use speaker phones to access the service, or in-person interpreters.<sup>72</sup>



In recognition of the disabilities and effective communication needs that can arise out of severe mental illness, Defendants have drafted policies and procedures appropriately aimed at suspending revocation proceedings for youths whose mental state renders them unable to participate.<sup>73</sup> Those procedures are designed to send the youths to treatment and to monitor their ability to return to hearings. The parties are negotiating the terms of this policy.

A related draft policy is much more controversial. Defendants propose to return some youths to custody for the purpose of treatment, where the youths are a danger to themselves or others, or gravely disabled; have engaged in conduct that indicates they are likely to commit a parole violation; and adequate treatment resources are not available to them in the community.

Defendants cite deeply held concerns for this population's welfare, as well as case law they argue supports this practice; they have built in protections meant to ensure treatment and expedite releases to the community once the parolees are stabilized. Plaintiffs advance similar concerns for these youths, and argue that the proposed practice is unconstitutional, that correctional institutions cannot be as appropriate as a treatment facility, and that experience in *Farrell* indicates that Division of Juvenile Justice facilities cannot be relied upon to provide quality care.

All acknowledge that these are important and complex issues that must be addressed. The Mastership anticipates continued involvement to reach workable solutions.

Informing counsel of the nature of the parolee's difficulty at the time of appointment, extra time for representation (§ 22, 49): Defendants have designed a form

titled Youth Status Form, which alerts counsel, and others reviewing a file, to the fact of a physical disability, mental health issue, or effective communication need. It employs check boxes that indicate the existence of a concern without detail as to types of limitations or accommodations needed. Plaintiffs object both to its brevity and the care with which some forms were completed.<sup>74</sup> Defendants undertook to review the field files of all youths currently in custody in order to complete and add this form. That effort has been suspended for the parties to come to agreement concerning this form, what should be included, and the process surrounding it. Defendants indicate that the review will be repeated for all files after agreement is reached.<sup>75</sup> In the meantime, the parties disagree that counsel is informed about the nature of the parolee's difficulty.

Attorneys are reportedly compensated for an additional three hours with clients, regardless of whether there is an identified disability, due to the expected prevalence of learning disabilities, communication difficulties, and lack of maturity.<sup>76</sup> This additional step shows good will in going beyond the Court's requirements.

Identification and tracking (§ 52): The picture concerning identification and tracking is not complete, but the following describes some components.

Defendants are using interim procedures in an effort to identify disabilities and effective communication needs.<sup>77</sup> Before serving parolees with the notice of rights and allegations, the Board Coordinating Parole Agents are to call the agents of record, asking them to review the field file to identify these needs. A brief, colored form has been added to files to call the agents' attention to a likely disability.<sup>78</sup> Coordinating parole agents are to assess the parolee during service and to document needs, identified from any source, on a request for accommodation. Plaintiffs note that, two to four weeks after this

procedure was instituted, parole agents at each of four trainings said some coordinating parole agents were not following these procedures.<sup>79</sup>

Upon a youth's release to parole, the Supervising Parole Agent is to review the field file to identify these needs.<sup>80</sup> Plaintiffs describe practices that could contribute to breakdowns in identifying disabilities.<sup>81</sup> They assert that there often are delays in forwarding files to agents of record when parolees are released on parole, that some files are not sent, and that others lack medical history supporting documents. In these circumstances, if an agent is unaware of a parolee's disability or effective communication need, he could create a placement plan that does not take those needs into account.

Parole agents are also to conduct an ADA and effective communication review of the field file and Field Information System when writing a violation report, should a youth be suspected of violating parole, and to document any such findings and accommodations in that report.<sup>82</sup>

Numerous reports, plans, tests, screenings, and evaluations contain disability and effective communication needs information and are present or summarized in parolees' field files and/or the Ward Information Network.<sup>83</sup> These sources can contribute to identification and tracking. However, limitations in staff access to those sources, the relatively recent nature of data inclusion, inconsistency in filing, sheer volume, and the apparent absence of routine and consistent review practices, combine to limit their effectiveness and reliability as a system of identification.

Defendants describe plans to make identification and communication of these needs a routine feature of the revocation process steps – plans modeled on those in use in

the adult revocation process -- once the juvenile system's version of the Revocation Scheduling and Tracking System is operational.

In the meantime, Defendants say, they intend, by December 15, 2008, to employ interim, centralized tracking of whether accommodations were needed and provided during revocation proceedings.<sup>84</sup> They indicate that a request for accommodation is routinely included when serving notice of rights and allegations, and that staff note on the form whether an accommodation was provided. Headquarters staff reportedly will review all revocation packets and record in a spreadsheet these requests and whether they were filled.

Forms in alternative formats (§ 48, 55): Defendants provided a set of forms for negotiation in early August. The parties have exchanged drafts and conferred at regular intervals, albeit less often than for policy discussions. Plaintiffs specify 20 forms needed and not yet included in negotiations, and they are concerned about the timing in that, they assert, their expert required the forms in October to be able to complete the simplification process in time for use in early December. The Special Master is not aware of Spanish language forms being available. It appears, however, that negotiations remain on track.

Prohibition of discrimination in parole placements and referrals to services (§ 27): Information concerning this requirement did not come to the Special Master's attention.

Develop an ADA grievance procedure (§ 54): According to interim procedures, during service of rights and allegations, staff are to advise parolees of their right to appeal denied accommodations, and parolees' attorneys are to provide grievance and appeal forms on request.<sup>85</sup> The Special Master does not have further information concerning this requirement.

**Development of an appeal process** (§ 43): As part of reporting of negotiations, Plaintiffs note they are concerned that policies and procedures do not include an adequate mechanism to track the timeliness of appeals and appeal decisions. Defendants have confirmed that, should a parolee appeal, CalPAP attorneys will be paid for that representation. The Special Master does not have further information concerning this requirement.

**Comprehensive annual training on ADA and effective communication, the Stipulated Injunction's requirements and policies and procedures, due process**

(§ 56): Defendants initiated ADA and effective communication training, as described above. They also describe detailed training, which appears to have been very well-designed, to introduce parole agents, hearing officers, and other staff to many aspects of due process and the interim procedures.<sup>86</sup>

Board Coordinating Parole Agents and hearing officers attended portions of the training that the Board of Parole Hearings provided for its new Deputy Commissioners in December 2007. The Division of Juvenile Justice then provided training for those staff and parole agents, during February and March 2008, to orient them to the very new practices and principles involved in conducting due process hearings. The training employed a variety of teaching methods and provided content on the roles of those involved and legal and evidentiary standards and principles in preparing, presenting, hearing, and weighing evidence.

Importantly, some sessions were delivered and attended jointly by the divisions and CalPAP, an effective method of generating a joint sense of responsibility and

troubleshooting implementation problems that tend to arise out of disciplines or divisions working in metaphorical silos.

This appears to be an effective start to meeting the training obligation. Annual training will, of course, be designed after policies and procedures are finalized.

**Tracking mechanism for timeframes and reasons for delay** (¶ 13, 32, 33):<sup>87</sup>

Defendants initiated work to incorporate their business process into the information system known as the Revocation Scheduling and Tracking System, contracting with information system consultants and reportedly conducting semi-weekly planning meetings with representatives of departments that will use the system. While this process was underway, Defendants learned that a substantial amount of infrastructure, on which their plans relied, would not be available. The delay in the state budget approval appeared to delay the purchases that were then necessary.

As of this writing, the Special Master understands that the building for the information systems department will need to be modified to provide sufficient space and power for this project. The Defendants have submitted a budget change proposal for information systems staff; they contend that, without an augmentation, there is insufficient staff to meet the demands of the two actions in which they are answerable to the courts – *Farrell* and *LH* – and they will be forced into noncompliance in at least one of the lawsuits.

It will be important for there to be sufficient resources to comply with the requirement of incorporating the Juvenile Parole Board revocation hearing business process requirements into the Revocation Scheduling and Tracking System by December 3, 2008.

### **Monitoring process**

The Stipulated Injunction requires Defendants to develop a self-monitoring team to ensure compliance with its terms and with relevant policies and procedures (§ 57). To the Special Master's knowledge, this function, understandably, has not yet developed.

Additionally, the issue of Plaintiffs' monitoring was reserved from the Stipulated Injunction. The parties met and conferred, considering several models for external monitoring. While talks were productive, they did not reach conclusion. The parties determined that this decision is best deferred until there is greater certainty about the substance to be monitored. In the meantime, they anticipate negotiating a monthly document production.

**Revocation may be extended only after a revocation extension hearing, and parolee must receive copy of decision** (§ 35, 40): When considering whether to extend a parolee's time in custody, the Stipulated Injunction requires a due process system in which parolees have counsel ("revocation extension"), no longer using the Disciplinary Decision Making System, "Time Adds," or parole consideration hearings for this purpose.. The parties are continuing to negotiate the policies and procedures, which Plaintiffs believe currently include too many features of the systems being replaced, which they note have been the subject of extensive criticism in this action as well as in the *Farrell* lawsuit.<sup>88</sup>

**Policies and procedures governing dual commitments** (§ 45): The parties have been negotiating this topic. The Special Master has no further information at this time.

**Elimination of “temporary detentions”; immediate rescission of relevant regulation** (¶ 39): Defendants report that they issued instruction on this requirement to field staff effective before the Stipulated Injunction was signed, in April 2008. The parties have not yet undertaken a review of whether the practice has completely ceased, but no reports of temporary detentions have come to the Special Master’s attention.

The Stipulated Injunction requires Defendants to “immediately rescind Title 15, California Code of Regulations § 4985,” which concerns this practice. Almost four months later, the rescission is in process but still requires several more steps of review and signature. This does not reflect the appropriate level of urgency.

Defendants note that part of the elapsed time was attributable to searching for related regulations that might be affected by the rescission, and they argue that the memorandum directing staff to cease this practice stopped the harm that the rescission was meant to address.

### **Summary**

Both parties should be commended, first for achieving a settlement and secondly for their continued dogged pursuit through “meet and confers” to come to agreement on policies and procedures and the issues in dispute.

The Defendants have worked aggressively in a difficult governmental environment to make significant changes in the juvenile justice parole system. Continued efforts to effect that change will be necessary as governmental agencies typically tend to lean toward retaining the status quo.



As many persons from both parties are intimately acquainted with the *Valdivia v. Schwarzenegger* lawsuit, many of the “lessons learned” in the adult parole system can assist in retooling the juvenile parole system. However, the persons “on the ground,” who must functionally implement the new policies and procedures, typically do not have that experiential base and will require explicit training and thoughtful leadership at all levels of the organization to successfully implement the required processes.

The Special Master’s team intends during the next term to concentrate on evaluating the Defendants’ implementation of the agreed upon processes and activities and to attempt to assist the parties in resolving those issues in dispute.

The Defendants have made important progress and are laying a solid foundation for the needed changes. The Special Master makes no recommendation to the Court at this time.

Chase Riveland /s/Chase Riveland  
Special Master

November 25, 2008

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- <sup>1</sup> The exception is the Stipulated Injunction requiring full implementation of its provisions related to the ADA as of September; that timeframe was missed. See below for a more complete discussion.
- <sup>2</sup> Source for this paragraph is informal communications with Defendants and CalPAP
- <sup>3</sup> This action, of course, occurred after the Stipulated Injunction was ordered
- <sup>4</sup> Compliance Report, October 14, 2008
- <sup>5</sup> See, e.g., letter from M. Lang to S. Renteria, August 22, 2008; since that time, the number has been reduced significantly
- <sup>6</sup> Letter from G. Grunfeld to M. Brady and S. Renteria, October 17, 2008; Special Master's observations
- <sup>7</sup> The sources for this paragraph are Compliance Report, October 14, 2008; DJJ Cases Closed, each month spanning June through September 2008; and Special Master's observations
- <sup>8</sup> See section titled "Tracking mechanism for timeframes and reasons for delay," below
- <sup>9</sup> See section titled "Requirements related to ADA and effective communication," below
- <sup>10</sup> The sources for this paragraph are Compliance Report, October 14, 2008 and informal communications with Defendants
- <sup>11</sup> Informal communications among parties
- <sup>12</sup> Compliance Report, October 14, 2008
- <sup>13</sup> Compliance Report, October 14, 2008
- <sup>14</sup> CalPAP confirms this is correct, to its knowledge; staff are not aware of any parolee who did not receive representation.
- <sup>15</sup> Informal communications with Defendants; there was only one case evident in the data where, after the time probable cause hearings were initiated, a revocation hearing was held but a probable cause hearing was not (see July 2008 spreadsheet)
- <sup>16</sup> Informal communications among parties
- <sup>17</sup> Compliance Report, October 14, 2008
- <sup>18</sup> DJJ Cases Closed, each month spanning June through September 2008; analysis includes only those cases with detainers from February 15, 2008 forward. These data measure from the date of detainer, rather than the hold, as the latter is not currently kept in revocation packets. Timeframe requirements for attorney appointment are to be fully implemented in December.
- <sup>19</sup> Of the 238 cases analyzed, 58% (138) had appointments in this length of time. Percentages increased over time.
- <sup>20</sup> The monthly totals were 11, 10, 18, and 16.
- <sup>21</sup> Appointments taking a month or more ranged from 10 to 13 each month.
- <sup>22</sup> While June saw 58 cases and July had 48, this jumped to 77 and 76 in August and September.
- <sup>23</sup> DJJ Cases Closed, each month spanning July through September 2008; June was not included in the review because it collected fewer relevant data points. In one case, CalPAP received the notice documents two days ahead of the hearing, and in one case, there was a same-day appointment at Los Angeles County Jail. These were the only apparent exceptions.
- <sup>24</sup> Informal communications with CalPAP
- <sup>25</sup> Informal communications with CalPAP
- <sup>26</sup> Informal communications with CalPAP
- <sup>27</sup> Informal communications with CalPAP
- <sup>28</sup> Compliance Report, October 14, 2008, and informal communications
- <sup>29</sup> Informal communications with CalPAP
- <sup>30</sup> Informal communications with CalPAP
- <sup>31</sup> DJJ Cases Closed, each month spanning July through September 2008; June was not included in the review because it collected fewer relevant data points. In one case, CalPAP received the notice documents two days ahead of the hearing, and in one case, there was a same-day appointment at Los Angeles County Jail. These were the only apparent exceptions.
- <sup>32</sup> Compliance Report, October 14, 2008, and informal communications with Defendants
- <sup>33</sup> Informal communications with CalPAP
- <sup>34</sup> *Farrell v. Cate*, a state court action with a Consent Decree currently being implemented in Division of Juvenile Justice facilities
- <sup>35</sup> Informal communications with Plaintiffs
- <sup>36</sup> Informal communications with CalPAP
- <sup>37</sup> Informal communications with CalPAP

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<sup>38</sup> Unless otherwise noted, sources for this section are Compliance Report, October 14, 2008, and informal communications with Defendants

<sup>39</sup> Memorandum from C. Supple to staff, July 7, 2008

<sup>40</sup> Informal communications with Defendants

<sup>41</sup> DJJ Cases Closed, each month spanning June through September 2008. These data measure from the date of detainer, rather than the hold, as the latter is not currently kept in revocation packets. Another 31 hearings (12%) were held within a week after the 13 business-day deadline.

<sup>42</sup> This analysis includes only those youths detained from February 15, 2008 forward.

<sup>43</sup> In fact, the longest cases worsened over time. In June and July, the longest time to hearing was under three months; in August and September, there were multiple cases exceeding that, and up to 6½ months.

<sup>44</sup> Memorandum from C. Supple to staff, July 7, 2008

<sup>45</sup> DJJ Cases Closed, each month spanning July through September 2008. In July, 14 cases concluded at the probable cause hearing; those numbers increased to 20 and 22 in the subsequent months.

<sup>46</sup> Compliance Report, October 14, 2008, and informal communications with Defendants

<sup>47</sup> Informal communications with Plaintiffs

<sup>48</sup> DJJ Cases Closed, each month spanning June through September 2008, measuring from the detainer

<sup>49</sup> 18 were heard within an additional week

<sup>50</sup> This includes only cases with a detainer date from February 15, 2008 forward.

<sup>51</sup> The cases with a quick turnaround – one to two weeks – peaked and dipped in alternating months. About half of the cases took two to four weeks between those hearings; these numbers largely increased during the Round. The lengthiest cases – those heard more than one month after the probable cause hearing – declined for a while but then spiked to their highest level in September. The range of times was 6 days to 4.7 months, and these also declined but then jumped in the most recent month.

<sup>52</sup> In fact, some indicators worsened during the Round. The number of timely cases decreased and there was an increase in the number of cases taking longer to resolve. This discussion includes only those youths detained from February 15, 2008 forward.

<sup>53</sup> DJJ Cases Closed, each month spanning June through September 2008; there were 58, 48, 77 and 76 closed cases in those months, respectively.

<sup>54</sup> *Id.*; 63 were continued on parole at probable cause hearing and 58 at revocation hearing, for a total of 121

<sup>55</sup> In these cases, the charges were dismissed altogether. In another 16 cases, charges were dismissed as part of transferring them to local jurisdiction proceedings (“non-707b” cases).

<sup>56</sup> The terms were distributed:

|                      |                      |
|----------------------|----------------------|
| 3 months -- 2        | <b>9 months - 21</b> |
| 4 months – 6         | 10 months - 4        |
| 5 months – 3         | 11 months - 1        |
| <b>6 months – 23</b> | 12 months – 11       |
| 7 months – 15        | unspecified- 1       |
| 8 months – 11        |                      |

Another 6 were returned until their maximum Available Confinement Time. A few others had other, miscellaneous dispositions.

<sup>57</sup> Informal communications with Plaintiffs

<sup>58</sup> This draws on cases assigned to CalPAP on or after June 4, 2008 and closed on or before October 10, 2008.

<sup>59</sup> Source for this paragraph is Compliance Report, October 14, 2008

<sup>60</sup> Compliance Report, October 14, 2008

<sup>61</sup> Letter from S. Huey to C. Riveland and V. Morrison, October 9, 2008; informal communications with Defendants

<sup>62</sup> Compliance Report, October 14, 2008, and informal communications

<sup>63</sup> Informal communications with parties

<sup>64</sup> Letter from C. Fritz to G. Grunfeld, July 1, 2008

<sup>65</sup> Letter from S. Huey to C. Riveland and V. Morrison, October 9, 2008

<sup>66</sup> Compliance Report, October 14, 2008

<sup>67</sup> Source for this paragraph is Compliance Report, October 14, 2008

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- <sup>68</sup> Informal communications with Plaintiffs
- <sup>69</sup> Memorandum titled Interim Accommodation/Effective Communication Policies and Procedures, September 2, 2008
- <sup>70</sup> Compliance Report, October 14, 2008; meeting contents as captured in S. Huey letter to M. Brady et al. dated July 22, 2008; informal communications
- <sup>71</sup> Source for this paragraph is Compliance Report, October 14, 2008; meeting contents as captured in S. Huey letter to M. Brady et al. dated July 22, 2008
- <sup>72</sup> Informal communications with Defendants
- <sup>73</sup> Sources for this and the next two paragraphs are policy titled PAROLEES WITH SERIOUS MENTAL HEALTH CONCERNS: RETURNS FOR IN-CUSTODY TREATMENT & SUSPENSION OF THE REVOCATION PROCESS, Sept. 8, 2008; Letter from A. Mania to M. Brady and S. Renteria, Sept. 29, 2008; policy with computer file name Psych Return P&Ps (draft 20081006) MH Review and Brady.doc
- <sup>74</sup> Informal communications with Plaintiffs; they report incomplete forms and some, for example, indicating “Other Disability” with no further detail.
- <sup>75</sup> Informal communications with Defendants; for more detail, please see discussion labeled, “At the time of attorney appointment, provision of relevant educational, mental health and disability identification and source documents (¶ 16),” above
- <sup>76</sup> Compliance Report, October 14, 2008
- <sup>77</sup> Memorandum titled Interim Accommodation/Effective Communication Policies and Procedures, September 2, 2008
- <sup>78</sup> That form, however, is subject to dispute between the parties. See the discussion in the previous section, “Informing counsel of the nature of the parolee’s difficulty at the time of appointment, extra time for representation.”
- <sup>79</sup> Letter from S. Huey to C. Riveland and V. Morrison, October 9, 2008
- <sup>80</sup> Memorandum titled Interim Accommodation/Effective Communication Policies and Procedures, September 2, 2008
- <sup>81</sup> Letter from S. Huey to C. Riveland and V. Morrison, October 9, 2008
- <sup>82</sup> Memorandum titled Interim Accommodation/Effective Communication Policies and Procedures, September 2, 2008
- <sup>83</sup> Sources for this paragraph are Special Master’s observations, Compliance Report, October 14, 2008, and informal communications with Defendants
- <sup>84</sup> Sources for this paragraph are Compliance Report, October 14, 2008, and informal communications with Defendants
- <sup>85</sup> Memorandum titled Interim Accommodation/Effective Communication Policies and Procedures, September 2, 2008
- <sup>86</sup> Source for this section is Compliance Report, October 14, 2008
- <sup>87</sup> Source for this section is Compliance Report, October 14, 2008
- <sup>88</sup> Informal communications with the parties